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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,214	03/18/2004	Lance Middleton	1842-0028	5833
28078	7590	11/02/2006	EXAMINER	
MAGINOT, MOORE & BECK, LLP CHASE TOWER 111 MONUMENT CIRCLE SUITE 3250 INDIANAPOLIS, IN 46204			BOUCHELLE, LAURA A	
			ART UNIT	PAPER NUMBER
			3763	
DATE MAILED: 11/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No. 10/803,214	Applicant(s) MIDDLETON ET AL.	
	Examiner Laura A. Bouchelle	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 9-11, 16, 17, 31-33, 35, 36, 40 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12-15, 18-30, 34, 37-39 and 42-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/18/06, 3/18/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-8, 12-15, 18-30, 34, 37-39, 42-44 in the reply filed on 8/28/06 is acknowledged. The traversal is on the ground(s) that consideration of all species will not significantly affect the burden of examination. This is not found persuasive because the claimed species are non-obvious variants of each other and with therefore pose a significant burden on the examiner if all species were to be examined.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 23-27, 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al (US 6234196). Fischer discloses a mixing adaptor and system comprising an elongate body 94 having a passage therethrough and opposite ends to engage syringes, and a flow modifying element 50 formed integrally in the body. The elongate body defining a mixing

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chamber 28. The device comprises two syringes 104, 84 adapted to reciprocally pass fluid there between. See Fig. 7.

4. Claims 1-6, 8, 12-15, 23-37, 28-30, 34, 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Beller (US 5425580). Beller discloses an elongate body 1 defining a passageway therethrough having a flow modifying element 3 formed integrally in the body, and a mixing chamber 1. The passage way defines a first flow area, and the flow modifying element forms a second restricted passageway. See Fig. 1. The restriction includes a plurality of nozzles 3 with mixing chambers in between. See Fig. 1. The device comprises a first 6 and second 10 syringe with a mixing chamber 1 there between. See Fig. 4. The device comprises retaining flanges 5 to engage the end of the syringe.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Beller. Claim 7 differs from Beller in calling for the first flow area to be about five times greater than the second flow area. Where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions

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would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. See MPEP 2144.04.

7. Claims 18-22, 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beller in view of Lake (US 6062722). Claims 18-22, 42-44 differ from Beller in calling for a sealed orifice in communication with the passageway. Lake teaches a fluid mixing device comprising a first syringe 12 and a second syringe 14 having a mixing chamber 16 there between and a sealed orifice 26 to add fluid into the mixing passageway to be mixed and to prevent fluid from unintentionally flowing out of chamber after it has been added through the orifice (Col. 3, lines 49-53). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Beller to include a self sealing orifice as taught by Lake so that fluid can be added to the mixing chamber and the mixing process can continue.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle
Examiner
Art Unit 3763

LAB


